

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VICTORINO ROMANO, VICENTE PABLO,
JORGE CAISANO, and EDUARDO
VASQUEZ, individually and on behalf of
others similarly situated,

07 CV 7011 (PAC)

**ANSWER TO FIRST
AMENDED COMPLAINT**

Plaintiffs,

-v.-

BASILEX FOOD CORP. d/b/a Fresh
Basil's Trattoria and CHRIS KATOS

JURY TRIAL DEMANDED

Defendants.

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Defendants BASILEX FOOD CORP. d/b/a Fresh Basil's Trattoria (hereinafter, "Basil's") and CHRIS KATOS, by their attorneys MITCHELL & INCANTALUPO, as and for their answer to the first amended complaint, allege and state:

NATURE OF THE ACTION

1. Deny the allegations set forth in paragraph "1" of the Complaint, except admit that one or more of the plaintiffs are working or worked for defendant Basil's.
2. Admit the allegations set forth in paragraph "2" of the Complaint.
3. Deny the allegations set forth in paragraph "3" of the Complaint.
4. Deny the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiffs purport to proceed as set forth therein.
5. Deny the allegations set forth in paragraph "5" of the Complaint.
6. Deny the allegations set forth in paragraph "6" of the Complaint, except admit that plaintiffs purport to proceed as set forth therein.

JURISDICTION AND VENUE

7. Deny the allegations set forth in paragraph “7” of the Complaint, except admit that the jurisdiction of this court is purportedly invoked as set forth therein.

8. Deny the allegations set forth in paragraph “8” of the Complaint, except admit that the venue of this court is purportedly invoked as set forth therein.

PARTIES

9. Deny the allegations set forth in paragraph “9” of the Complaint.

10. Deny the allegations set forth in paragraph “10” of the Complaint.

11. Deny the allegations set forth in paragraph “11” of the Complaint.

12. Deny the allegations set forth in paragraph “12” of the Complaint.

13. Admit the allegations set forth in paragraph “13” of the Complaint.

14. Admit the allegations set forth in paragraph “14” of the Complaint.

15. Deny the allegations set forth in paragraph “15” of the Complaint, except admit that plaintiffs purport to proceed against the individual defendant as set forth therein.

STATEMENT OF FACTS

16. Deny the allegations set forth in paragraph “16” of the Complaint, except admit that the named plaintiffs worked as delivery personnel for Basil’s.

17. Deny the allegations set forth in paragraph “17” of the Complaint.

18. Deny the allegations set forth in paragraph “18” of the Complaint, except admit that plaintiffs regularly received tips from customers.

19. Deny the allegations set forth in paragraph “19” of the Complaint.

20. Deny the allegations set forth in paragraph “20” of the Complaint.

21. Deny the allegations set forth in paragraph “21” of the Complaint.

22. Deny the allegations set forth in paragraph “22” of the Complaint.

23. Deny the allegations set forth in paragraph “23” of the Complaint, except admit that plaintiff Romano requested to be paid in cash.

24. Deny the allegations asserted in paragraph “24” of the Complaint.

25. Deny the allegations set forth in paragraph “25” of the Complaint.

26. Deny the allegations set forth in paragraph “26” of the Complaint, except admit that defendant Chris Katos is the majority shareholder of the corporate stock of Basil's.

27. Deny the allegations set forth in paragraph “27” of the Complaint.

28. Admit the allegations set forth in paragraph “28” of the Complaint.

29. Deny the allegations set forth in paragraph “29” of the Complaint, and respectfully refer all questions of the meaning and construction of the said statutes to the Court.

COLLECTIVE-WIDE ALLEGATIONS

30. Deny the allegations set forth in paragraph “30” of the Complaint.

31. Deny the allegations set forth in paragraph “31” of the Complaint, except admit that plaintiffs customarily and regularly earned far in excess of \$ 30.00 per month in tips.

32. Deny the allegations set forth in paragraph “32” of the Complaint.

33. Deny the allegations set forth in paragraph “33” of the Complaint.

34. Deny the allegations set forth in paragraph “34” of the Complaint, and respectfully refer all questions of the meaning and application of the said statutes to the Court for construction.

35. Deny the allegations set forth in paragraph “35” of the Complaint.

36. Deny the allegations set forth in paragraph “36” of the Complaint.

37. Deny the allegations set forth in paragraph “37” of the Complaint.

38. Deny the allegations set forth in paragraph “38” of the Complaint.

39. Deny the allegations set forth in paragraph “39” of the Complaint.

40. Deny the allegations set forth in paragraph “40” of the Complaint.

FIRST CAUSE OF ACTION

41. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs “1” through “40” as if more fully set forth at length herein.

42. Deny the allegations set forth in paragraph “42” of the Complaint, and respectfully refer all questions of the meaning and application of the said statutes to the Court for construction.

43. Deny the allegations set forth in paragraph “43” of the Complaint, except admit that defendant Basil’s was so engaged.

44. Deny the allegations set forth in paragraph “44” of the Complaint and refer all questions of law to the Court.

45. Deny the allegations set forth in paragraph “45” of the Complaint.

46. Deny the allegations set forth in paragraph “46” of the Complaint.

47. Deny the allegations set forth in paragraph “47” of the Complaint.

48. Deny the allegations set forth in paragraph “48” of the Complaint.

SECOND CAUSE OF ACTION

49. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs “1” through “48” as if more fully set forth at length herein.

50. Deny the allegations set forth in paragraph “50” of the Complaint and respectfully refer all questions of law to the Court.

51. Deny the allegations set forth in paragraph “51” of the Complaint.

52. Deny the allegations set forth in paragraph “52” of the first Complaint.

53. Deny the allegations set forth in paragraph “53” of the first Complaint.

54. Deny the allegations set forth in paragraph “54” of the first Complaint.

THIRD CAUSE OF ACTION

55. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs “1” through “54” as if more fully set forth at length herein.

56. Deny the allegations set forth in paragraph “56” of the Complaint, and respectfully refer all questions of the construction and application of the said statutes to the Court.

57. Deny the allegations set forth in paragraph “57” of the Complaint, and respectfully refer the Court to the text of the statutes for an accurate and complete description, and the import, thereof.

58. Deny the allegations set forth in paragraph “58” of the Complaint.

59. Deny the allegations set forth in paragraph “59” of the Complaint, and respectfully refer the Court to the text of the statutes for an accurate and complete description, and the import, thereof.

FOURTH CAUSE OF ACTION

60. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs “1” through “59” as if more fully set forth at length herein.

61. Deny the allegations set forth in paragraph “61” of the Complaint.

62. Deny the allegations set forth in paragraph “62” of the Complaint.

FIFTH CAUSE OF ACTION

63. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs “1” through “62” as if more fully set forth at length herein.

64. Deny the allegations set forth in paragraph “64” of the Complaint.

65. Deny the allegations set forth in paragraph “65” of the Complaint.

66. Deny the allegations set forth in paragraph “66” of the Complaint.

SIXTH CAUSE OF ACTION

67. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "66" as if more fully set forth at length herein.

68. Deny the allegations set forth in paragraph "68" of the Complaint.

69. Deny the allegations set forth in paragraph "69" of the Complaint.

70. Deny the allegations set forth in paragraph "70" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

72. All or part of the claims asserted herein by plaintiffs are barred by the applicable statute of limitations.

WHEREFORE, defendants request judgment dismissing the First Amended Complaint and denying all relief requested therein, together with the costs of defending this action, including reasonable attorney fees.

Dated: October 7, 2007
Forest Hills, New York

MITCHELL & INCANTALUPO

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